

JUDGE SPARKS

07 07

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X

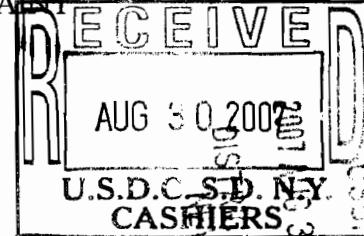
Julian PENA (A97 506 747),  
Petitioners

-against-

DEPARTMENT OF HOMELAND SECURITY,  
THE UNITED STATES CITIZENSHIP & IMMIGRANT  
SERVICES and the FEDERAL BUREAU OF  
INVESTIGATION,

Respondents .

COMPLAINT



X

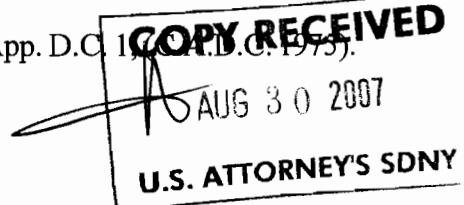
**PETITION FOR MANDAMUS**

To the Honorable Judges of the United States District Court, Southern District of New York: Petitioner, Julian PENA (A97 506 747), herein petitions this Court through this mandamus action to direct the Federal Bureau of Investigations (hereinafter referred to as the "FBI") and the Department of Homeland Security (hereinafter referred to as "DHS") through its branch the United States Citizenship & Immigration Service (hereinafter referred to as "USCIS") to finalize his background checks and petition for permanent residence forthwith.

This action arises from the respondents' violation of Section 6 of the Administrative Procedure Act, and 5 U.S.C. §555(b), and 28 U.S.C. §1331 and 1361.

**JURISDICTION**

1. The Administrative Procedure Act requires that administrative agencies have a duty to decide issues presented to them within a reasonable time. 5 U.S.C. §555(b).
2. 28 U.S.C. §1331 confers jurisdiction on the District Courts to review actions of federal agencies. 28 U.S.C. §1331 note 48. Reviewing courts have a duty to compel agency action unreasonably delayed. Neder v. F.C.C., 50 F.2d 182, 172 U.S. App. D.C. 1, 194 F.2d 1975.



3. Furthermore, 28 U.S.C. §1331 provides that “district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”
4. Under Rule 81 of the Federal Rules of Civil Procedure, writs of mandamus are abolished: “Relief heretofore available by mandamus ... may be obtained by appropriate action or by appropriate action or by appropriate motion under the practice prescribed in these rules”.
5. Section 279 of the Immigration and Nationality Act, 8 U.S.C. Sec 1329 confers jurisdiction upon United States District Courts for review of all cases arising under the Immigration and Nationality Act, and the Administrative Procedures Act provides for judicial review of federal administrative agencies, authorizing the court to compel agency action unlawfully withheld or unreasonably denied.
6. Jurisdiction also lies under the United States Constitution because a benefit has been conferred to the Petitioners and the executive arm of the government is required to assure that the laws are discharged and complied with.

#### STATEMENT OF FACTS

7. Petitioner, Julian PENA (A97 506 747) , a native and citizen of the Dominican Republic lived and continues to live in New York, New York. He applied for permanent residence through an application filed with the United States Citizenship and Immigration Service in New York, New York on August 16, 2003 as a spouse of a United States citizen which makes him immediately eligible for permanent residence. See Exhibit “A”.
8. Mr. Pena was interviewed with his wife pursuant to the application for permanent residence August 25, 2005 at Garden City, New York. See Exhibit “B”.

9. Thereafter Petitioner's case has remained unfinalized. He sought to find out the status of his case on several occasions through inquiries to the USCIS. None of these inquiries resulted in a conclusion of the case. See Exhibit "C". Thereafter the petitioner sought assistance through his Congressional Representative, Charles Rangel. Mr. Rangel's office was advised that the background checks were still outstanding but no further resolution occurred on the case. Following these numerous inquiries about the case, the USCIS has provided no indication that it is willing to adjudicate his petition.

#### RELIEF SOUGHT

10. Petitioner faces the possibility that his cases will remain unadjudicated for substantial additional time.
11. Petitioner has sought through numerous inquiries, congressional intervention and self-help to have his case finalized to no avail.
12. Petitioner has no means to compel the USCIS to complete those duties that are required of it by law. All attempts by the Petitioners to have his case finalized have been fruitless indeed.
13. The USCIS and the FBI are the only agency authorized to perform adjudications and the relevant background checks, respectively, and they have failed to do so; the petitioner's petition for adjustment of status has not been completed despite that petitioner has fulfilled all the requirements of the statute and laws and is eligible to become a permanent resident. There is no forum or means other than this mandamus action for petitioner to obtain relief. Because the USCIS case is "pending", petitioner cannot file any appeal within the agency itself, or an administrative appeal.
14. The USCIS and the FBI are statutorily mandated to perform background checks and to

adjudicate permanent resident applications. These procedures must be performed within a reasonable time which has not occurred. More than four years have passed since the petitioner filed his application.

15. Further inaction could seriously harm the petitioner, as he is ineligible for numerous benefits afforded to United States permanent residents. For example, he can not leave the country until he becomes a permanent resident. Consequently, this administrative inertia is actionable, and the U.S. District Court has jurisdiction and the power to compel this agency's action and to compel a final adjudication of the petitioner's application. Jeffrey v. INS, 710 F. Supp. 486 (S.D.N.Y.1989), Environmental Defense Fund, Inc. v. Haden, 428 F.2d 1093, 138 U.S. App.D.C. 391(C.A.D.C. 1970).

WHEREFORE, Petitioner respectfully request through this Mandamus action that the United States Citizenship & Immigration Services and the Federal Bureau of Investigations be directed to immediately finalize the necessary background checks and grant the petitioner permanent residence.

Dated: August 28, 2007



---

Jennifer Oltarsh  
Oltarsh & Associates, P. C.  
Attorneys for the Petitioner  
494 Eighth Avenue, Suite 1704  
New York NY 10001  
(212) 944-9420

## Notice of Action

U.S. IMMIGRATION AND NATURALIZATION SERVICE

Receipt Number: MSC-04-008-13442	Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: August 16, 2003	Priority Date:
Notice Date: October 10, 2003	Page 1 OF 1
ASC Code: 3	

ROY SMITH  
510 W 157 ST STE 6F  
NEW YORK NY 10032

Notice Type: Receipt Notice  
Amount Received: \$0.00

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

**FINGERPRINTING AND BIOMETRICS-**

The next step is to have your fingerprints and biometrics taken at a BCIS Application Support Center (ASC).

Call our National Customer Service Center (NCSC) at 1-800-375-5283 to schedule your appointment. For TDD hearing impaired assistance, please call 1-800-767-1833.

It is important that you schedule your appointment. If you do not schedule or appear for your appointment, it could cause your application to be denied. If you need to reschedule your appointment, please call the NCSC at 1-800-375-5283.

**WHAT TO BRING TO Your appointment -**

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from BCIS in relation to your current application for benefits.

BIOMETRICS PROCESSING STAMP  
ASC SITE CODE:  
BIOMETRICS QA REVIEW BY:

**CASE STATUS -**

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at [www.BCIS.gov](http://www.BCIS.gov) where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. BOX 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283



U.S. Department of Justice  
Immigration and Naturalization Service

## Notice of Action

### U.S. DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE

Receipt Number: MSC-04-008-13441	Case Type: I-130 - Petition for Alien Relative
Received Date: August 16, 2003	Priority Date:
Applicant: PENA, ANGELA	ASC Code:
Notice Date: October 10, 2003	Page 1 OF 1

ROY SMITH 510 W 157 ST STE 6F NEW YORK NY 10032	Notice Type: Receipt Notice
	Amount Received: \$0.00

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at [www.BCIS.gov](http://www.BCIS.gov) where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES  
P.O. BOX 648005  
Lee's Summit, MO 64064  
National Customer Service Center: 1-800-375-5283



UNITED STATES DEPARTMENT OF JUSTICE  
MIGRATION AND NATURALIZATION SERVICE

28 FEDERAL PLAZA  
NEW YORK NEW YORK 10278

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

Wadsworth Julian Pennington  
1/5/04 3

MSC-0400813442

672-0400813442

N<sup>Q</sup> 1/17/08  
TIP10 706015 #5

Oliva

TIP 1580600273 NYC 6/6/06

ESABE /

TIA1930601449 NYC

IGACIO

Nombre de oficial o  
Supervisor que tiene  
el caso.

Sara

1602

U. S. T. M. S.  
FEE RECEIPT  
A CENTURY OF SERVICE

08/23/07

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FR PRINT	4 50.00
I 765	4 120.00
I 130	4 130.00
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NO	555.00
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2-7608

#6A

Department of Homeland Security  
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

U.S. DEPARTMENT OF HOMELAND SECURITY  
U.S. CITIZENSHIP AND IMMIGRATION SERVICES  
U.S. GOVERNMENT

## REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW

NOTICE DATE  
June 08, 2005

## FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

A# A-097-506-747

APPLICATION NUMBER  
MSC0400813442

RECEIVED DATE

August 16, 2003

PRIORITY DATE

August 16, 2003

PAGE

1 of 1

## APPLICANT NAME AND MAILING ADDRESS

JULIAN MD PENA  
220 WADSWORTH AVE APT BSMT  
NEW YORK NY 10033

PLEASE COME TO: U.S. Citizenship and Immigration Services

711 STEWART AVENUE  
2ND FLOOR SECTION 245  
GARDEN CITY NY 11530ON: Thursday, August 25, 2005  
AT: 07:00 PM

You are hereby notified to appear for the interview appointment, as scheduled above, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485). Failure to appear may result in the denial of your application.

## Who should come with you?

- If your eligibility is based on your marriage, your husband or wife must come with you to the interview.
- If you do not speak English fluently, you should bring an interpreter who is neither a relative nor an interested party in your application.
- Your attorney or authorized representative may come with you to the interview.

NOTE: Every adult who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.

What MUST you bring?

- Bring this Interview Notice.
- Bring your Government-issued photo identification.
- Bring all your Passports and any other documents, including your Arrival/Departure Document (Form I-94), used to enter the United States.
- Bring your Birth Certificate.
- Bring all documentation establishing your eligibility for Lawful Permanent Resident status (see below: What else should you bring?)
- Bring all immigration-related documentation ever issued to you.
- Bring both originals and photocopies of all supporting documents. Otherwise, we may keep your originals for our records.
- Bring a certified English translation for each document not in English. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate.

## What else should you bring?

- Bring any Employment Authorization card or paper, and any Authorization for Advance Parole (Form I-512) ever issued to you.
- Bring your petitioner's Birth Certificate and your petitioner's evidence of United States Citizenship or Lawful Permanent Resident status.
- If you have children, bring a Birth Certificate for each of your children.
- If you are married, bring your Marriage Certificate.
  - Your spouse's Birth Certificate and your spouse's evidence of United States Citizenship or Lawful Permanent Resident status.
  - If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse.
  - Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you.
  - Supporting evidence of your relationship, such as joint financial statements, joint legal documents, joint insurance policies, and photos.
- If you have not already submitted it, bring a completed medical examination (Form I-693) and vaccination supplement in a sealed envelope.
- Bring your Federal Income Tax returns and W-2's, or certified IRS printouts, for the past 3 years.
- If you are employed, bring letters from each of your current employers on company stationery, verifying your current rate of pay and average weekly hours, and bring your pay stubs for the past 3 months.
- Bring completed Affidavit(s) of Support (Form I-864), with all required evidence, including the following for each of your sponsors:
  - Federal Income Tax returns and W-2's, or certified IRS printouts, for the past 3 years;
  - Letters from each current employer on company stationery, verifying current rate of pay and average weekly hours, and pay stubs for the past 3 months;
  - Evidence of United States Citizenship or Lawful Permanent Resident status.
- If you have ever been arrested, for each arrest, bring the related Police Report and the original or certified Final Court Disposition, even if the charges have been dismissed or expunged. If no court record is available, furnish a letter from the court with jurisdiction indicating the disposition.

**PLEASE MAKE EVERY EFFORT TO KEEP YOUR APPOINTMENT.** Even if you do not have all the listed items, if an emergency, such as the hospitalization of a close relative, prevents you from appearing, call the Citizenship and Immigration Services (CIS) customer service as soon as possible. Please be advised that rescheduling will delay processing, may require some steps to be repeated, and will affect your eligibility for other immigration benefits while this application is pending.

If you have questions, please call CIS customer service at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833).

APPLICANT COPY

CHARLES B. RANGEL  
15TH CONGRESSIONAL DISTRICT  
NEW YORK

COMMITTEE:  
WAYS AND MEANS  
RANKING MEMBER  
JOINT COMMITTEE ON TAXATION

2354 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-3215  
TELEPHONE: (202) 225-4365

**Congress of the United States  
House of Representatives  
Washington, DC 20515-3215**

June 29, 2006

DISTRICT OFFICE:  
MS. VIVIAN E. JONES  
DISTRICT ADMINISTRATOR  
 163 WEST 125TH STREET  
NEW YORK, NY 10027  
TELEPHONE: (212) 663-3900

PLEASE RESPOND TO  
OFFICE CHECKLD

Ms. Linnea Stuart, Congressional Liaison Supervisor  
U.S. Dept. of Homeland Security  
United States of Citizenship and Immigration Service  
26 Federal Plaza  
New York, NY 10278

Dear Sir/Madam:

The following individual has been in contact with our congressional office relative to their immigration issue. We would very much appreciate your looking into this case and advising our office as to the status of this case.

NAME/PETITIONER: ANGELA AMARILIS CARMEN  
ADDRESS: 220 WADSWORTH AVENUE, ABSMT.  
NEW YORK, NY 10033

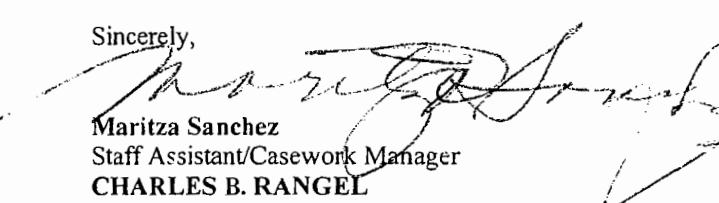
MAILING ADDRESS: NONE  
FORMER ADDRESS: NONE

BENEFICIARY (S): JULIAN MANUELDE JESUS PENA  
DOB: 7/27/60  
COB: DOM.REP.  
ALIEN REG. NO. 97 506 747

INFO: PENDING I-485; INTERVIEWED ON 8/25/2005 AT THE NY/GC WITH DAO  
MP; A-FILE IS LOCATED IN NY/GC; WE ARE REQUESTING ON BEHALF  
OF THE APPLICANT THE ADJUDICATION ON THE ABOVE MATTER;  
PLEASE ADVISE

Thank you.

Sincerely,

  
Maritza Sanchez  
Staff Assistant/Casework Manager  
CHARLES B. RANGEL  
Member of Congress

CHARLES B. RANGEL  
15TH CONGRESSIONAL DISTRICT  
NEW YORK

COMMITTEE:  
WAYS AND MEANS  
RANKING MEMBER  
JOINT COMMITTEE ON TAXATION

**Congress of the United States  
House of Representatives  
Washington, DC 20515-3215**  
June 29, 2006

2354 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-3215  
TELEPHONE: (202) 225-4365

DISTRICT OFFICE:  
MS. VIVIAN E. JONES  
DISTRICT ADMINISTRATOR

163 WEST 125TH STREET  
NEW YORK, NY 10027  
TELEPHONE: (212) 663-3900

PLEASE RESPOND TO  
OFFICE CHECKED

U.S. Homeland Security  
United States Citizenship & Immigration Services  
Newark District Office

Dear Sir/Madam:

I, hereby, authorize the Office of Congressman Charles B. Rangel, located at 163 West 125<sup>th</sup> Street, New York, New York 10027, to secure any and all information relating to my case:

The authorization is given in order that the Congressman's Office might assist me.

Name: Julian manuel de los Peña  
Address: 229 wadsworth ave.  
apt. Bsmr. N.Y. N.Y.

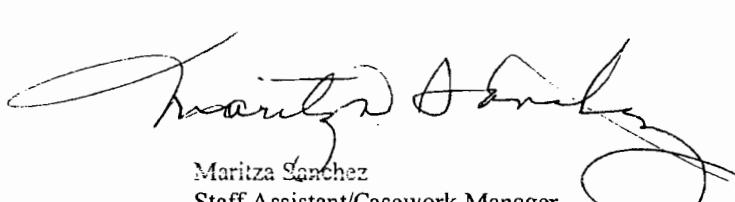
Alien Registration No. 97 506 747

I consent to release information to Congressman Rangel's Office:

✓ Maritza Sanchez

Thank you for your kind attention.

Sincerely,

  
Maritza Sanchez  
Staff Assistant/Casework Manager  
CHARLES B. RANGEL  
Member of Congress

## Case Status Search

Receipt Number: msc0400813442

Application Type: I485, Application to Register Permanent Residence or to Adjust Status

Current Status:

On January 5, 2004, the results of your fingerprint review for your I485 Application to Register Permanent Residence or to Adjust Status were received, and processing has resumed on your case. We will mail you a notice if further action is needed, or when a decision is made.

---

If you have a question about case status information provided via this site, or if you have not received a decision or advice from the USCIS within the projected processing time frame, please contact the National Customer Service Center at (800) 375 5283 or 1-800-767-1833 (TTY).

Mr. Julian M.D. PENA  
220 Wadsworth Ave., Apt. Bsmt.,  
New York, New York 10033 USA  
November 6th, 2006

USCIS  
711 Stewart Ave., 2nd Fl.,  
Attn: Sec. 245 Unit  
Garden City, N.Y. 11530 USA

RE: USCIS FILE NO. A097 506 747  
Receipt No. MSC04008813442 (I-485)

Ref: Inquiry on I-485 Application for Adjustment of Status.

To whom it may concern:

I appeared with my wife on the 25th of August 2005, at 1:02P.M. I was interviewed by a DAO, and told that all was found to be satisfactory. To please wait for the fingerprints to clear. I was subsequently requested to have my prints retaken, which I did. I have had no reply from your offices.

Please be so kind as to review my file, and kindly render a decision. I thank the Service for its time and continued cooperation. I remain,

Sincerely,  
  
Julian Manuel De Jesus PENA-  
DOB: 07-27-60; COB: Dominican Republic.

JMDJP:mf  
enc.

cc: Ben M. Arai, Esq.,

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Hoy | Correo | Calendario | Contactos

julianpena60@hotmail.com  Messenger: En línea ▾

 Responder |  Responder a todos |  Reenviar |  Eliminar |  No deseado |  Colocar en carpeta ▾ |  Vista de imágenes

De: CRIS <USCIS-CRIS@dhs.gov>  |  |  |  Bandeja de entrada  
 Enviado el: Monday, June 04, 2007 2:52:16 PM  
 Para: JULIANPENA60@HOTMAIL.COM  
 Asunto: Your recent inquiry (receipt #MSC-04-008-13442)

U.S. Department of Homeland Security  
 Jacob Javits Federal Building  
 26 Federal Plaza  
 New York, NY 10278

U.S. Citizenship and Immigration Services  
 Monday, June 4, 2007

Emailed to JULIANPENA60@HOTMAIL.COM

Dear M. PENA:

On 05/31/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:  
 -- Applicant or Petitioner

Attorney Name:  
 -- Information not available

Case type:  
 -- I485

Filing date:  
 -- 08/21/2003

Receipt #:  
 -- MSC-04-008-13442

Beneficiary (if you filed for someone else):  
 -- PENA, JULIAN, MD

Your USCIS Account Number (A-number):  
 -- 097506747

Type of service requested:  
 -- Outside Normal Processing Times

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services



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